



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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Common Carrier Bureau  
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CE 96-159

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September 16, 1996

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SEP 18 1996

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Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

VIA FEDERAL EXPRESS

DOCKET FILE COPY ORIGINAL

Re: In the Matter of Petition for Declaratory Ruling  
to Impose Competitively Neutral Guidelines for  
Numbering Plan Administration; NSD File No. 96-9

Dear Secretary Caton:

Enclosed are an original and seven copies of the Comments and Motion to File Comments Out-Of-Time of the Pennsylvania Public Utility Commission. Please do not hesitate to contact the undersigned if you have any questions regarding this matter.

Very truly yours,

Maureen A. Scott  
Assistant Counsel

MAS/ms

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 10554

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In the Matter of )  
)  
Petition for Declaratory ) NSD File No. 96-9  
Ruling to Impose Competitively )  
Neutral Guidelines for )  
Numbering Plan Administration )

**MOTION TO FILE COMMENTS  
OUT-OF-TIME**

Pursuant to 47 C.F.R. § 1.46, the Pennsylvania Public Utility Commission ("PaPUC") respectfully requests leave to file the attached initial comments out-of-time. In support thereof, the PaPUC states as follows:

1. On July 12, 1996, Teleport Communications Group filed a Petition for Declaratory Ruling with the Commission.

2. The Commission set the deadline for filing initial comment at September 16, 1996, and the deadline for filing reply comments at October 1, 1996.

3. The PaPUC is the state agency responsible for the regulation of telecommunications providers and services within the Commonwealth of Pennsylvania. The PaPUC has a significant interest in the outcome of this proceeding.

4. Due to shortages in staff at the present time, the PaPUC was unable to meet the September 16, 1996 filing deadline for initial comments.

5. No party will be prejudiced by the PaPUC's late-filed initial comments since the PaPUC's comments are only one (1) business day out-of-time.

6. Should the Commission decide not to accept the attached initial comments as late-filed, the PaPUC respectfully requests that the Commission consider the comments as ex parte pursuant to 47 C.F.R. §§ 1.1200-1.1216.

WHEREFORE, in light of the foregoing, the PaPUC respectfully moves that it be permitted to submit the attached initial comments out-of-time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Maureen A. Scott', is written over a horizontal line.

Maureen A. Scott  
Assistant Counsel

Frank B. Wilmarth  
Deputy Chief Counsel

John F. Povilaitis  
Chief Counsel

Attorneys for the Pennsylvania  
Public Utility Commission

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Harrisburg, PA 17055-3265  
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Dated: September 16, 1996

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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**COMMENTS OF THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**I. Introduction and Executive Summary of Comments.**

On July 12, 1996, Teleport Communications Group Inc. ("TCG") filed a Petition for Declaratory Ruling with the Commission requesting that the Commission issue an order requiring that:

(1) overlay relief plans may not be implemented until permanent number portability exists and mandatory 10-digit dialing is required for all calls in the area affected;

(2) geographical code splits are to be the only form of area code relief if permanent number portability and mandatory 10-digit dialing is not in place;

(3) TCG's proposed Number Crunch Solution be implemented in place of mandated number rationing or freezes; and

(4) as part of all RBOC § 271 applications, a demonstration be made that numbering resources are available with a denial of requests for in-region interLATA authority if competitors do not have number resources available throughout a state.

The Pennsylvania Public Utility Commission ("PaPUC") submits the following opposition to the TCG Petition. A brief summary of the PaPUC's position is as follows. Since the TCG

Petition was filed, the Commission released its Second Report and Order in Docket 96-98 which delegates authority to state commissions on NPA exhaust issues. The Order also establishes parameters for the resolution of number exhaust issues in the future.

In so doing, the Commission specifically rejected TCG's position that overlays are anti-competitive and recognized that the use of overlays, as long as they meet certain requirements, would actually be preferable to the use of geographic splits in some localities. The relief requested by TCG in its Petition is, therefore, in direct conflict with the Commission's own findings in both the Second Report and Order and the Ameritech Order.

In light of the Commission's recent rulings in its Second Report and Order at Docket 96-98, the Commission should deny the TCG Petition as moot. To the extent the Petition seeks modification of the Commission's Second Report and Order at Docket 96-98, the Company's remedy is to file a petition for reconsideration with the Commission. Therefore, the Commission should deny TCG's Petition.

## **II. Discussion.**

TCG filed its Petition before the FCC released its August 8 1996 Second Report and Order in Docket 96-98 which has now addressed many of the issues raised by Teleport in its Petition. Consequently, the TCG Petition is now moot in most respects.

In its Second Report and Order, the Commission authorized states to continue to oversee the introduction of new area codes subject to the Commission's numbering administration guidelines.<sup>1</sup> The Commission recognized that "states are uniquely situated to determine what

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<sup>1</sup>Existing Commission guidelines enumerated in the Ameritech Order require that numbering administration: (1) seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient and timely basis; (2) not unduly favor or

type of area code relief is best suited to local circumstances."<sup>2</sup>

The Commission's Second Report and Order discredits the Company's arguments that overlays are anticompetitive in violation of the Commission's Ameritech Order. To the contrary, both the Commission's Ameritech Order and Second Report and Order recognize that overlays are more appropriate in some circumstances than geographic splits as long as certain conditions are met. The Commission stated in this regard:

...[c]ertain localities may have circumstances that would support the use of area code overlays. Most significantly, area code overlays do not require any existing customers to change their telephone number, in contrast to geographic splits. Additionally, in some metropolitan areas continuously splitting area codes will result in area codes not covering even single neighborhoods, a situation that can only be avoided by implementing overlays. Finally, area code overlays can be implemented quickly.

Second Report and Order at para. 283.

Moreover, the Commission also specifically rejected arguments similar to those made by TCG here that the Commission permit area code overlays only if permanent number portability has been implemented in the applicable NPA, stating:

We recognize that the implementation of permanent service provider number portability will reduce the anticompetitive impact of overlays by allowing end users to keep their telephone numbers when they change carriers. Requiring the existence of permanent service provider number portability in area before an overlay area code may be implemented, however, would effectively deny state commissions the option of implementing any all-services overlays while many area codes are facing exhaust. While permanent number portability is being implemented, end users will be allowed to keep their telephone numbers when they change carriers, under

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disadvantage any particular industry segment or group of consumers; and (3) not unduly favor one technology over another.

<sup>2</sup>Second Report and Order at para. 283.

the Commission's mandate of interim number portability.

Second Report and Order at para. 290.

PaPUC concurs with the FCC's findings in both its Ameritech Order and Second Report and Order that overlays are not anticompetitive, that states should continue to have the discretion of implementing overlays when deemed appropriate, and that the use of overlays prior to the advent of long-term number portability is appropriate.

On June 20, 1996, the PaPUC adopted an Order for the 412 area code which includes Pittsburgh and the surrounding metropolitan area, implementing a new area code overlay, consistent with the Commission's guidelines in its Ameritech Order. The PaPUC, in authorizing the use of an overlay stated in part:

As previously discussed, interim number portability is available now and long-term number portability will begin next year. With portability, an overlay is the most practical means of addressing number shortages. It would not be prudent regulation to cause customers as well as carriers to bear the substantial costs associated with a geographic split, only to implement an overlay in the not so distant future. The overlay method of addressing the number shortage seems to be the least disruptive when area code relief is needed, since the alternative would be to have smaller and smaller geographic divisions. Not implementing an overlay in the 412 area at this time would only delay the inevitable.

PaPUC Order at p. 11.

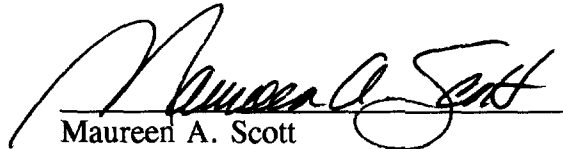
However, since the PaPUC's recent Order addressing number shortages in the 412 area code was adopted prior to release of the Second Report and Order, the PaPUC was not aware of the additional terms and conditions imposed by the Commission's Second Report and Order on overlay usage. Consequently, the PaPUC will be reviewing the terms of its recent Order to determine its consistency with the additional terms and conditions on overlay use set forth in the

Commission's Second Report and Order. At this time, PaPUC is aware of only one inconsistency in that our Order does not mandate 10-digit dialing throughout the affected NPA as now required by the Commission's Second Report and Order. The PaPUC intends to address this issue and any other inconsistencies during reconsideration of both its Order and the FCC's Second Report and Order.

### **III. Conclusion.**

The Commission should deny the TCG Petition as moot. To the extent TCG continues to have concerns relating to the use of overlays, it should seek reconsideration of the Commission's Second Report and Order in Docket 96-98.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Maureen A. Scott", is written over a horizontal line.

Maureen A. Scott  
Assistant Counsel

Frank B. Wilmarth  
Deputy Chief Counsel

John F. Povilaitis  
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